

CONSULTATION PAPER ON CIVIL PENALTIES ADMINISTERED BY THE ALDERNEY COMPANY REGISTRY

About this consultation

On the 6th January 2023, the Alderney Company Registry (“Registry”) issued a consultation paper on amendments to legislation administered by the Registry (“Consultation Paper”). After careful consideration of the input received from consultees, it is currently envisaged that a set of proposals on this subject matter will be considered by the States of Alderney in the near future (“Proposals”).

The Proposals include –

- (a) the establishment of a civil penalty regime in the Companies (Alderney) Law, 1994 (“Companies Law”); and
- (b) the introduction of new civil penalties in the Companies Law.

This consultation paper is seeking views from stakeholders on the Registry’s proposals concerning the levels and bandings applied to the new civil penalties included in the Proposals.

How to submit comments

Any comments with respect to these proposals should be submitted to court@alderney.gov.gg by the close of business on **Thursday, 13 July 2023**.

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Civil Penalty Level and Banding Proposals

This consultation paper is seeking views from stakeholders on the Registry's proposals concerning the levels and bandings applied to the new civil penalties included in the Proposals.

For the purposes of attributing the correct civil penalty level, it is proposed that –

1. companies will be differentiated depending on the category they are classed in. **Table A** below sets out the categories; and
2. each civil penalty will be attributed a banding to differentiate between the severity of the various contraventions. **Table B** below sets out the three civil penalty bands.

Table B sets out all of the civil penalty levels and bandings for the new civil penalties that are being put forward under the Proposals. The Proposals are envisaged to be effective once the necessary legislation is in place and a further communication will be made once these dates are known.

TABLE A – CATEGORISATION OF LEGAL ENTITIES

Legal Entity	Category A	Category B
Companies	non-administered company, a company that is a Guernsey registered charity or non-profit organisation	administered company
Definitions	<p><i>For the purposes of this consultation paper,</i></p> <ul style="list-style-type: none"> • <i>an "administered" entity is an entity licensed by the Guernsey Financial Services Commission under the supervisory laws or administered, controlled or operated by another entity licensed by the Guernsey Financial Services Commission under the supervisory laws in the course of its activities , and "non-administered" entity shall be construed accordingly;</i> • <i>"the supervisory Laws" has the meaning given in section 2(b) of the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020.</i> 	

TABLE B – CIVIL PENALTY LEVELS AND BANDINGS

Civil Penalty Band	Civil Penalty	Civil Penalty Level Category A	Civil Penalty Level Category B
Civil Penalty Band 1	<ul style="list-style-type: none"> • Failure to keep records at registered office • Failure to maintain records kept at registered office and keep them accurate and up to date • Failure to notify Registrar of change to registered particulars 	sliding scale of: <ul style="list-style-type: none"> - £125 (where default is up to one week); - £250 (where default is between one week and one month); - £500 (where default is more than one month) 	sliding scale of: <ul style="list-style-type: none"> - £250 (where default is up to one week); - £500 (where default is between one week and one month); - £1000 (where default is more than one month)
Civil Penalty Band 2	<ul style="list-style-type: none"> • Failure to submit annual validation/annual renewal • Failure to carry out audit (only for large companies¹ that are unable to rely on the audit exemption) • Failure to have record of resident agent • Failure to give notice to Registrar of change to resident agent 	sliding scale of: <ul style="list-style-type: none"> - £300 (where default is up to one week); - £600 (where default is between one week and one month); - £1200 (where default is more than one month) 	sliding scale of: <ul style="list-style-type: none"> - £500 (where default is up to one week); - £1000 (where default is between one week and one month); - £2000 (where default is more than one month)
Civil Penalty Band 3	<ul style="list-style-type: none"> • Obstruction or failure to comply (without reasonable excuse) with information request or requirements • Failure by resident agent to comply with information notice requirements or to make false statements etc. in response to information notice. • Failure to have resident agent 	£2500	£2500

¹ It is envisaged that the definition of a large company will be equivalent (to the extent possible) to the definition under the Companies (Guernsey) Law, 2008. It follows that it is envisaged that an Alderney company would be a large company if it satisfied two of the following conditions: (a) it has an annual net turnover of £10.2 million or greater, (b) it has a net balance sheet of £5.1 million or greater, or (c) it has an average number of employees of 50 or more. Further, it is envisaged that Alderney companies with 10 or fewer members or which are licensed insurers within the meaning of the Insurance Business (Bailiwick of Guernsey) Law, 2002 and have received notice by the Guernsey Financial Services Commission (“Commission”) under section 35(6) of that Law will not be regarded as a large company.